IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2006

CORAM

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

W.P.No.8239 of 1998

Narendraraj Bohra .. Petitioner

Versus

1. Government of Tamilnadu
   rep. by Secretary,
   Home Department,
   Fort St. George,
   Madras 9.

2. Sub-Inspector of Police,
   R-3 Police Station,
   Ashok Nagar, Madras 83.

3. Superintendent of Prisons,
   Central Prison, Madras 3. .. Respondents

PRAYER: The Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondents to implement the G.O.Ms.No.180, Home (Prison 4) Department dated 28.01.1989, G.O.Ms.No.781 (Home (HRC) Dept., dated 11.4.90, G.O.Ms.No.279 Home (Prison C) dept., dated 23.2.92, G.O.Ms.No.296 Home (Prisoners-4) Dept., dated 20.2.93, G.O.Ms.No.205 Home (Prisons-4) Dept. Dated 23.2.94 and G.O.Ms.No.1163 Home (Prison IV) Dept. Dated 12.8.97 and grant remission of the sentence to the petitioner imposed in C.C.No.6636/81 dated 26.4.83 on the file of the Court of II Metropolitan Magistrate, Egmore, Madras as reversed in C.A.No.152/83 dated 18.1.84 on the file of the Court of Principal Sessions Judge, Madras and as reversed in C.A.No.99/87 dated 20.8.97 on the file of this Court.

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For Petitioner : Mr.A.Muthukumar
For Respondents : Mr.S.Rajasekar, GA

ORDER

The prayer in the writ petition is to grant remission of the

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sentence to the petitioner imposed in C.C.No.6636/81 dated 26.4.83 on the file of the Court of II Metropolitan Magistrate, Egmore, Madras as reversed in C.A.No.152/83 dated 18.1.84 on the file of the Court of Principal Sessions Judge, Madras and as reversed in C.A.No.99/87 dated 20.8.97 on the file of this Court.

2. The case of the petitioner is that the petitioner was convicted on 26.04.1983 by the Second Metropolitan Magistrate in C.C.No.6636 of 1981 to undergo four months R.I. and a fine of Rs.1,000/- was inflicted. The said amount of fine has been paid. The petitioner carried the matter on appeal in Criminal Appeal No.152 of 1983 before the Principal Sessions Judge, Madras, who allowed the appeal. That order made in Criminal Appeal No.152 of 1983 has been taken on further appeal by the wife of the petitioner in Criminal Appeal No.99 of 1987 before this Court. This Court, by order dated 20.08.1997 partly allowed the appeal by reducing the sentence of imprisonment by one month. While that being so, the Government of Tamil Nadu exercising the power under Section 432 of the Criminal Procedure Code granted remission of sentence in various Government orders which has been referred to in the prayer portion and granted the benefit. If the remission so granted by the G.Os were given to the petitioner, he need not undergo the sentence. But the benefits of the G.Os were negatived by the respondent on the sole ground that the petitioner has not been arrested after the order passed by the High Court reducing the sentence to one month. The petitioner hence filed the present writ petition seeking for issuance of a writ of mandamus, directing the respondents to implement G.O.Ms.No.180 dated 28.01.1989 and give the remission to the petitioner, and if such remission is granted to the petitioner, the petitioner need not undergo any sentence.

3. The point involved in this writ petition is that whether the petitioner is entitled to the benefit of G.O.Ms.No.180 dated 28.01.1989 and whether in order to avail the benefit, the petitioner has to surrender himself to undergo the sentence and get himself released on the basis of the benefit granted in the G.O.

4. Both the issues are no more res-integra. It is already covered by the decision of this Court.

5. The first preposition whether the petitioner is entitled to the benefit of G.O. as the G.O. has been passed on 28.01.1989 prior to the order made in appeal on the file of this Court in Crl.A.No.99 of 1987 on 20.08.1997. It is crucial to note that the original order of conviction has been passed on 26.04.1983 by the Second Metropolitan Magistrate, Egmore, in C.C.No.6636 of 1981. In the case of State by Food Inspector, Paramakudi vs. Balakrishnan reported in 1983 LW Crl.79, this Court while considering a similar issue has held as follows:-

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"Though the respondent is being convicted in the appeal now still by virtue of the law laid down by the Supreme Court in Maru Ram vs. Union of India, the present conviction does back to the date of the judgment of the trial court which gets substituted by this judgment and the respondent would be entitled to all the benefits which he would have got had he been convicted by the trial court. The respondent therefore is entitled to the benefit of the two Government Orders and the entire sentence of imprisonment of six months would stand remitted under any one of the Government Orders".

6. In respect of the second question, whether the petitioner has to follow the ritual of surrendering himself and then get released has been considered by this Court in the case of Sukhraj Sanghvi, Champalal Sanghvi vs. State represented by the Inspector of Police, Central Crime Branch, Egmore, Madras 8 reported in 1990 L.W. (Crl.)532, wherein this Court in paragraph 5 has held as follows:-

"5. The relevant clause of the G.O.Ms.No.180 dated 28.1.89 would point out that in no uncertain terms to claim the benefit of the above said G.o. It is not at all necessary that they should be undergoing imprisonment on the date when the G.O. came into force. What is necessary is that there should be a conviction by Court to punishment for the offences with which they are charged. This aspect of the matter will emerge to surface on a reading of last portion of the opening paragraph. It is couched in the following terms, namely, the Government have decided to grant remission to certain classes of persons who have been convicted to punishments for various offences. The phraseology "who have been convicted to punishments for various offences" has clearly indicated that persons convicted to punishments can claim benefit of the G.O...."

The Court further held as follows:-

".....As adverted to earlier, they are not undergoing imprisonment and they are outside by the stay of operation of the judgment of this Court in the above said Criminal Appeal upto 31.3.89 and it is also the admitted fact that

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the petitioners neither surrendered before the Court for undergoing the imprisonment nor the police arrested them subsequent to 31.3.89. The relevant factor is that they were convicted and the proceedings before the Court were pending till upto 31.3.89 long subsequent to coming into force of the G.O. In the said state of affairs, there is no need for them to undergo any further imprisonment, inasmuch as the sentence of imprisonment of six months imposed on them by this Court in the above said Criminal appeal must be deemed to have been remitted by the above said G.O."

Incidentally in both the cases above, the very same Government Order No.180 Home (Prisons IV) Department, dated 28.01.1989 was the subject matter of consideration.

7. In view of the above said judgments, I am of the considered opinion that the petitioner is entitled to the benefit of G.O.Ms.No.180, Home (Prisons IV) Department dated 28.1.1989 and as such the writ petition is allowed as prayed for. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Secretary,
   Government of Tamilnadu
   Home Department,
   Fort St. George,
   Madras 9.

2.The Sub-Inspector of Police,
   R-3 Police Station,
   Ashok Nagar, Madras 83.

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3.The Superintendent of Prisons,
Central Prison, Madras 3.

Copy to

The Public Prosecutor,
High Court, Madras.

+1cc to Mr.A.Muthukumar, Advocate Sr 37098
+1cc to the Govt. Pleader Sr 37224

NTK (CO)
km/30.8.



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